IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11101 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAVJIBHAI PUNJABHAI VAGRI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR SAMIR DAVE for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/2001

ORAL JUDGEMENT

#. This is another case in the series where it is clearly borne out from the facts of this case that the order of detention of the petitioner has been made only for statistical data purpose. While making the order, deliberately lacunas appear to have been left out so that

he may get himself released from this detention by filing this petition. This matter was admitted on 19.10.2000 and it is expected by the court from the respondents to file reply within three weeks but that has also not been done. Not only that, thereafter, they had more than three opportunities but reply has not been filed. From this fact also, I am satisfied that at this stage, favour has been extended to the petitioner so that he may get his order of detention set aside in these proceedings. If the orders are to be passed only to see that ultimately this court quash them, it is nothing but only a fraud on the Act in the State. Be that as it may, the averments made by petitioner in paragraph-7 of the special civil application stand uncontroverted. The petitioner has made a grievance therein that the detaining authority has not supplied all the statements of the witnesses recorded under Section 161 of the Cr.P.C. and F.S.L. report in respect of C.R. No.354/2000. In the representation filed by the petitioner to the detaining authority, this point has also been raised. Despite of making of this demand by the petitioner in the representation, the detaining authority has not responded to this representation. In the documents of which certain copies were prayed for are vital documents and non supply of the same certainly results in deprival to him of his valuable right of making effective representation against the detention order. This action of the respondents is certainly violative of Article 22(5) of the Constitution and the detention of the petitioner cannot be permitted.

#. As a result of aforesaid discussion, this petition succeeds and the same is allowed and the order of detention of the petitioner dated 12.9.2000 is quashed and set aside. The petitioner - Mavjibhai Punjabhai Vagri, the detenu, at present at Junagadh District Prison, Junagadh, be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The State of Gujarat is directed to pay cost of the petition to the petitioner which is quantified at Rs.3,000/=.

#. The learned counsel for the respondents strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly, it is the discretion of the court to award the costs. So there is little scope for raising such objection by the learned counsel for the respondents. Otherwise also, I consider it to be a fit case to award the costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.3,000/= as fees from the

petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage any advocate of his own choice. Nobody can compel the petitioner nor any law requires that he has to engage an advocate who charges lesser fees. The advocate is a professional and if any body approaches him to provide his professional services he can charge his own fees. This is not the only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat, an impersonal machinery, is not at fault in the matter. It's only fault is that it has no control over its officers nor it takes its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officers, reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer is a people's money. This money has to be paid to the petitioner by the State of Gujarat not for its own fault, but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter.

#. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter on the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and that amount is recovered from those officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss, its House may not be corrected.

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(sunil)